

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1861 of 1988

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

SHANKARLAL S SOLANKI

Versus

STATE OF GUJARAT

Appearance:

MR BIPIN P JASANI for Petitioner
MR PUJARI AGP for Respondent No. 1
MR PARESH UPADHYAY for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 08/12/2000

ORAL JUDGEMENT

Heard the learned advocates.

The petitioner before this court is the former
employee of the respondents herein and has retired from

service of the respondent no. 2 the Gujarat Water Resources Development Corporation Ltd., (hereinafter referred to as 'the Corporation') on 28th February, 1988. It is the grievance of the petitioner that though he has retired from service in the month of February, 1988, his retirement benefits including that of pension are not paid. The petitioner was initially appointed as a Daftari in the office of the Executive Engineer, North Gujarat Tubewell Division No. 1, Ahmedabad, on 4th February, 1954. Since then, he was promoted as a Junior Clerk on 21st September, 1959, and was transferred to the Directorate of the Ground Water Investigation on 9th March, 1970. On establishment of the Corporation, the petitioner's service was transferred to the Corporation on 10th June, 1976, wherefrom he retired on 28th February, 1988.

The Corporation has contested this petition by filing affidavit of its Administrative Officer Shri V.R.Dave. It is stated that for the period of employment of the petitioner under the Corporation, the petitioner was entitled to Gratuity and the Contributory Provident Fund. The amount of Gratuity i.e. Rs. 11,286/- was paid to him on 21st September, 1988, and the sum of Rs. 10,332/- being the employee's (petitioner's) contribution to the Provident Fund was paid to him on 17th March, 1988. The employer's contribution to the Provident Fund i.e. sum of Rs. 15,722-05 PS was paid to the petitioner by a cheque on 17th September, 1988, however, he refused to accept the said cheque. The said cheque was, therefore, sent to the petitioner by a Regd.Post, which too the petitioner refused to accept. Thus, a sum of Rs. 15,722-05 PS being the employer's contribution to the Provident Fund still remains outstanding to the credit of the petitioner.

The State has not contested the petition. It appears that the petitioner claims (though not explicitly made out in the petition) that his entire service right from the year 1954 till the date of his retirement i.e. till the year 1988 shall be considered to be a service under the State Government and shall be considered to be pensionable service for the purposes of his retirement benefits. It is the case of the petitioner that though his service was transferred to the Corporation in the year 1976, and though he had submitted option to be permanently absorbed in the Corporation, no formal order in this respect was made. The petitioner thus continued to be a Government servant and his service under the Corporation can either be said to be a loan service or a service on deputation. In either case, the petitioner

continued to be a Government servant and entire service shall be considered to be pensionable service under the Government. The petitioner has relied upon the communications dated 2nd September, 1987 and 12th January, 1988 (Annexures - E & F to the petition). Today at the time of the hearing, Mr. Patel has produced Government Resolution dated 1st December, 1988. A copy of the said Government Resolution dated 1st December, 1988 is ordered to be taken on record as Annexure-G to the petition. Annexure-E to the petition i.e. communication dated 2nd September, 1997, is sent by the Deputy Secretary (Pension) to the Additional Chief Secretary, Narmada Development Department. The said communication is in respect of 22 employees whose services were transferred to the Corporation and had retired from service in the year 1984 without they being absorbed in the Corporation. It was, therefore, suggested that they be considered Government servants and be paid retirement benefits accordingly. Annexure-F is the communication dated 12th January, 1988, sent by the Administrative Officer of the Corporation to the Superintending Engineer. It was suggested that all Government servants transferred to the Corporation, if not absorbed in the Corporation, be treated to have retired from service as Government servants. In my view, neither of the aforesaid communication shall apply to the case of the petitioner. The communication dated 2nd September, 1987 (Annexure-E to the petition) was in respect of 22 employees who had retired from service of the Corporation without they being absorbed in the Corporation. Admittedly, the petitioner is not one of those 22 employees. The said communication can not be said to be a policy decision of the State. Moreover, the said communication also mentions that those employees who are absorbed in the Corporation, shall be governed by the relevant instructions. The communication dated 12th January, 1988 (Annexure-F to the petition) is also an internal communication and the suggestion made by the Administrative Officer of the Corporation can not be considered to be the State policy, nor should it confer any right upon the petitioner. The orders of absorption or otherwise of the former employees of the State Government transferred to the Corporation are contained in the Government Resolution dated 1st December, 1988 (Annexure-G to the petition). The petitioner's name appears at Sr.No.33 in Appendix-B to the said Resolution. As regards the persons whose names are included in the Appendix-B, the Government has resolved that the said persons shall stand permanently absorbed in the Corporation with effect from 14th December, 1981. It is an admitted fact that the petitioner had opted for

absorption in the Corporation and under the above referred Resolution dated 1st December, 1988, the petitioner stands absorbed in the Corporation with effect from 14th December, 1981. Be it noted that the said Resolution is not under challenge in this petition.

In view of the above referred Resolution of 1st December, 1988 of the State, the petitioner stands permanently absorbed in the Corporation with effect from 14th December, 1981 and his relations of master and servant with the State Government stands severed from that day. The petitioner's claim that his entire service till the year 1988 shall be treated as Government service is, therefore, not sustainable and is rejected. However, it can not be gainsaid that the petitioner had effectively served as a Government servant since his appointment in the year 1954 till his absorption in the Corporation on 14th December, 1981. The petitioner shall, therefore, be entitled to all service benefits for the period from 4th February, 1954 (the date of his appointment) till 13th December, 1981 as a Government servant. It is, therefore, declared that the petitioner is entitled to all service benefits for the period from 4th February, 1954 till 13th December, 1981. In paragraph-8 of the counter-affidavit, it is stated that the petitioner was called upon to submit his pension papers, however, he has refused to sign them. Thus, it appears that the petitioner has yet not submitted his pension papers and is being paid minimum pension provisionally.

In view of the above discussion, the respondent no.2 Corporation is directed to calculate the amount of Corporation's contribution to the Provident Fund for the period from 14th December, 1981 till 28th February, 1988, and to remit such amount to the petitioner with the statutory interest accrued thereon within a period of six weeks from today. In the event the petitioner refuses to accept such amount, subject to the objection to the calculation of such amount, if any, shall forfeit his right to receive the said amount. The petitioner is directed to submit his pension papers for the period from 4th February, 1954 till 13th December, 1981 within a period of one month from today. On petitioner's submitting the pension papers and completing all necessary formalities, the Corporation shall forward the same to the State Government within a period of one week from the receipt of such papers. The Government shall process the same and make the payment of the amount of pension and other retirement benefits due and payable to the petitioner within a period of four months from the

date of the receipt of the pension papers. In the event the State Government fails to make the payment of the amount of pension and other retirement benefits due and payable to the petitioner within four months as directed hereinabove, the Government shall be liable to pay interest at the rate of 12% PA on such amount from the date of submission of the pension papers to the State Government till the date of the payment.

Petition is allowed to the above extent. Rule is made absolute accordingly. There shall be no order as to costs.

(MS R.M.DOSHIT J)

JOSHI